

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.PD.No.4696 of 2013

and

MP.No.1 of 2013

P.Subramani

... Petitioner

vs.

1.E.Shoukathullah Saheb

2.Vellore Municipality,
Rep. by its Commissioner,
Officer's Line,
Vellore.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 30.08.2013 in IA.No.354 of 2013 in OS.No.232 of 2004 on the file of the Additional District Munsif, Vellore.

For Petitioner

: Mr.C.P.Sivamohan

for Mr.K.Karthik Jaganath

For Respondents

: Mr.S.Jaganathan

Government Advocate (CS)
for R2

No appearance for R1

ORDER

The revision petitioner is the plaintiff in OS.No.232 of 2004 on the file of the Additional District Munsif, Vellore. He filed the suit for a permanent injunction restraining the respondents / defendants from interfering with his peaceful possession and enjoyment of the suit property except under due process of law. The defendants filed their written statements and both the parties went for trial. Subsequently, the revision petitioner filed a petition under Order XXVI Rule 9 of the Code of Civil Procedure in IA.No.354 of 2013 praying to appoint an Advocate Commissioner to inspect the suit property with the help of the second defendant and to note down the nature of possession and enjoyment of the suit property and also the physical features of the suit property and file his report. The respondents / defendants filed their respective counters.

2. The learned Additional District Munsif, Vellore after analysing the records, dismissed the petition vide his fair and decreetal orders dated 30.08.2013 on the ground that the Advocate Commissioner cannot be appointed to prove the possession of the revision petitioner / plaintiff.

Aggrieved over the same, the revision petitioner has filed the present Civil Revision Petition under Article 227 of the Constitution of India.

3. Mr.C.P.Sivamohan, learned counsel appearing for the civil revision petitioner contended that the civil revision petitioner / plaintiff had invested huge amount of money for developing the suit property and therefore, it is just and necessary to appoint an Advocate Commissioner to note down the nature of possession, enjoyment and also the physical features of the suit property. He would also contend that the trial court was wrong in dismissing the application by concluding that Advocate Commissioner cannot be appointed to prove possession as the civil revision petitioner / plaintiff had not sought to prove his possession over the suit property through the Advocate Commissioner. He therefore prayed for allowing this Civil Revision Petition.

4. A perusal of the copy of the plaint in OS.No.232 of 2004 shows that the property originally belonged to the first defendant and the plaintiff has contended that the first defendant entered into a lease agreement with the plaintiff's father after receiving a sum of Rs.2,82,000/- (Rupees Two

Lakhs Eighty Two Thousand only) on 31.12.1996. It is further contended by him that the father of the plaintiff was initially in possession of the suit property and subsequently both the plaintiff's father and the plaintiff are in enjoyment of the suit property without any interruption. Therefore, it is clear from his arguments that the plaintiff is only a lessee in the suit property and the prayer in the suit is for "granting permanent injunction restraining the defendants, their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the schedule mentioned property unless and until the plaintiff is evicted under due process of law". When the plaintiff himself has submitted that he is in possession of the property as a lessee and cannot be evicted except under due process of law, appointment of an Advocate Commissioner to inspect the suit property to find out the nature of possession and enjoyment is not necessary. The trial court has rightly dismissed the application filed by the civil revision petitioner. Therefore, I do not see any reason to interfere with the findings recorded by the learned Additional District Munsif, Vellore. The contention of the learned counsel that the Advocate Commissioner should at least be permitted to note down the various infrastructure facilities and developments made in the suit property by the plaintiff cannot be accepted

as the same is out of the scope of the suit. It is also pertinent to point out that the plaintiff can always adduce documentary evidence, if at all he wants to place on record the developments made by him in the suit property.

5. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

6. Since the suit is of the year 2004, the trial court is directed to dispose of the suit in OS.No.232 of 2004 on the file of the Additional District Munsif, Vellore within a period of three months from the date of receipt of a copy of this order.

24.07.2019

mbi

Index : Yes/No

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R.HEMALATHA, J.

mbi

To

The Additional District Munsif,
Vellore.



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